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NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

**CATHY A. CATTERSON, CLERK
U.S. COURT OF APPEALS**

FOR THE NINTH CIRCUIT

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

OWEN R. FOX, aka Seal C(3),

Defendant - Appellant.

No. 06-50353

D.C. No. CR-99-00904-3-CBM

MEMORANDUM^{*}

Appeal from the United States District Court
for the Central District of California
Consuelo B. Marshall, Senior District Judge, Presiding

Submitted October 22, 2007^{**}

Before: B. FLETCHER, WARDLAW, and IKUTA, Circuit Judges.

Owen R. Fox appeals from the 121-month sentence imposed following this court's order vacating and remanding for resentencing in light of *United States v. Ameline*, 409 F.3d 1073 (9th Cir. 2005) (en banc). We have jurisdiction pursuant to 28 U.S.C. § 1291, and we affirm.

^{*} This disposition is not appropriate for publication and is not precedent except as provided by 9th Cir. R. 36-3.

^{**} The panel unanimously finds this case suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

Fox contends that his sentence is unreasonable because it results in an unwarranted sentencing disparity between Fox and one of his co-defendants under 18 U.S.C. § 3553(a)(6). We conclude that Fox's sentence is not unreasonable. *See United States v. Plouffe*, 445 F.3d 1126, 1131-32 (9th Cir.), *cert. denied*, 126 S. Ct. 2314 (2006).

Additionally, Fox contends that the district court incorrectly applied the preponderance of the evidence standard when imposing an upward adjustment to his offense level for the amount of loss to investors. We conclude that the district court applied the correct standard. *See United States v. Riley*, 335 F.3d 919, 927 (9th Cir. 2003).

AFFIRMED.